

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
WestCEL)	File No. SLD-266135
Rangley, Colorado)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: January 14, 2003

Released: January 15, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by WestCEL.¹ WestCEL requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny WestCEL's Funding Year 2001 application for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of WestCEL's application.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to

¹ Letter from Chris Brubaker, WestCEL, to the Federal Communications Commission, filed March 4, 2002 (Request for Review).

² See Request for Review; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chris Brubaker, WestCEL, dated October 1, 2001 (Administrator's Decision on Appeal). Previously, this funding period would be referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ended on June 30, 2002 is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, previously described as Funding Year 5, is now called Funding Year 2002, and so on.

³ 47 C.F.R. §§ 54.502, 54.503.

receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and services for which it seeks discounts.⁴ The applicant must then wait 28-days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁵ Moreover, the Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 2001 was January 18, 2001.⁷

3. The record shows that WestCEL's FCC Form 470 was posted on December 27, 2000.⁸ Under the program rules, WestCEL was not permitted to file its FCC Form 471 until after the end of the 28-day competitive bidding period, on January 24, 2001.⁹ However, WestCEL signed its FCC Form 471 on January 15, 2001, presumably in order to satisfy the January 18, 2001 filing window deadline.¹⁰

4. WestCEL admits that it violated the 28-day competitive bidding rule but contends that a limited circumstance justifies granting its Request for Review.¹¹ Specifically, WestCEL requests the Administrator's Decision on Appeal be overturned because the employee entrusted with WestCEL's Funding Year 2001 request was recently hired and he did not understand the

⁴ 47 C.F.R. § 54.504(b).

⁵ 47 C.F.R. § 54.504(c); *see* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁶ 47 C.F.R. § 54.504(c), 54.507(g).

⁷ SLD website, What's New Archives (September 2000)
<<http://www.sl.universalservice.org/whatsnew/092000.asp#091800>>.

⁸ *See* FCC Form 470, WestCEL, filed December 27, 2000.

⁹ *See id.*; 47 C.F.R. § 54.504(b)(4).

¹⁰ *See* FCC Form 471, WestCEL, filed January 16, 2001.

¹¹ WestCEL cites to the Administrator's Decision on Appeal stating that "FCC rules require that except under limited circumstances, all Forms 470 received be posted on the website for 28 days ... before signing and submitting a Form 471" as justification for its Request for Review. Administrator's Decision on Appeal at 2 (citing 47 C.F.R. §§ 54.504, 54.511 (a), (c)). Note that this exception is of limited scope and only applies to applicants that have "pre-existing contracts," as defined by the Commission's rules. In particular, a signed contract between an eligible school, library, or consortium for services eligible for discounts under the schools and libraries universal service support mechanism is exempt from the Commission's competitive bidding requirements as follows: (1) a contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements for the life of the contract; and (2) a contract signed after July 10, 1997, but before the [January 30, 1998] date on which the universal service competitive bid system became operational, is exempt from the competitive bidding requirements only with respect to services that are provided under such contract for the first funding period. 47 C.F.R. §§ 54.511(c)(1)(i) and (ii); 54.511(d). The limited exception rule is inapplicable in the present case because WestCEL requested funding for month-to-month services and tariffed services, and such services do not constitute a "pre-existing contract." Therefore, for these services, an FCC Form 470 must be posted annually and is subject to the 28-day competitive bidding rule.

rules concerning the filing deadlines and the filing window.¹² Moreover, WestCEL claims that the Administrator's website did not provide sufficient notice that for Funding Year 2001, FCC Form 470s should have been filed no later than December 20, 2000 to satisfy the 28-day competitive bidding process and still meet the January 18, 2001 filing window deadline.¹³

5. We disagree. As we have held in the past, it is well settled that in light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the burden of understanding all relevant program rules and procedures.¹⁴ In particular, we have determined that failure to understand program rules is not a valid excuse for applicants that have been denied funding.¹⁵ In any event, WestCEL's claim that the Administrator's website did not provide notice of the need to allow 28-days from the date of its filing of FCC Form 470 in order to meet the closing window deadline is unfounded. Specifically, the Administrator's website for the Funding Year 2001 noted in its tips for filing the FCC Form 470 that it must be filed with enough time to achieve the 28-day period before filing of the FCC Form 471, "which must be postmarked no later than January 18"¹⁶ Consequently, failure to comply with the competitive bidding requirements must result in a denial of support by SLD.¹⁷

6. WestCEL further contends that its appeal should be granted despite its violation of the 28-day competitive bidding rule because denial of support for Funding Year 2001 will jeopardize its consortium and disadvantage its students.¹⁸ Although it is unfortunate that WestCEL's error in following the competitive bidding rules resulted in denial of its Funding Year 2001 request, as stated above, it is administratively necessary for the applicant to bear the burden of understanding program rules and procedures.¹⁹ We, therefore, deny WestCEL's Request for Review.

¹² See Request for Review at 1.

¹³ See *id.*

¹⁴ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, File No. SLD-13364, CC Docket No. 96-45 and 97-21, Order, 15 FCC Rcd 181 (Com. Car. Bur. 2000), para. 8; see also SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 4, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

¹⁵ *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent it is requested "due to misunderstanding of the program rules").

¹⁶ SLD website, Tip 2: File Your Form 470 Anytime During the Program Year, http://www.sl.universalservice.org/reference/470Tps_Yr4#1.

¹⁷ See, e.g., *Request for Review by Raytown Quality Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-113698, CC Dockets No. 96-45 and 97-21, Order, DA 01-147 (Com. Car. Bur. rel. January 23, 2001).

¹⁸ See Request for Review at 1.

¹⁹ See *supra* note 12.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by WestCEL, Rangle, Colorado, on March 4, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Wireline Competition Bureau